

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-0107**

Clayton James Hanks, petitioner,
Appellant,

vs.

John King, Warden, et al.,
Respondents.

**Filed November 3, 2009
Affirmed
Johnson, Judge**

Washington County District Court
File No. 82-CV-08-4569

Clayton James Hanks, OID # 201882, MCF – Oak Park Heights, 5329 Osgood Avenue North, Stillwater, MN 55082-1117 (pro se appellant)

Lori Swanson, Attorney General, Jackson Evans, Assistant Attorney General, 445 Minnesota Street, Suite 900, St. Paul, MN 55101-2134 (for respondents)

Considered and decided by Johnson, Presiding Judge; Halbrooks, Judge; and Larkin, Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

While in prison, Clayton James Hanks assaulted another inmate. Prison officials disciplined him by placing him in segregation for 15 days and by extending his imprisonment by five days. He petitioned for a writ of habeas corpus on the grounds that

prison officials denied him his right to due process during the prison disciplinary process and that he is not being housed in an appropriate area of a correctional facility. The district court denied his petition. We affirm.

FACTS

In June 2007, Hanks was convicted of three counts of second-degree burglary and sentenced to serve consecutive prison sentences of 44 months, 18 months, and 18 months.

On November 9, 2007, while incarcerated at the correctional facility in Lino Lakes, Hanks had a physical altercation with another inmate. Hanks punched the other inmate in the face, and the other inmate required stitches in his forehead.

On November 13, prison officials gave Hanks a written notice of violation, which charged him with three offenses: (1) disorderly conduct, a violation of offender disciplinary regulation (ODR) 320, which permits a maximum segregation sentence of 45 days and extended incarceration of 30 days; (2) assault on an inmate, a violation of ODR 412, which permits a maximum segregation sentence of 180 days and extended incarceration of 90 days; and (3) assault with bodily harm of an inmate, a violation of ODR 416, which permits a maximum segregation sentence of 180 days and extended incarceration of 90 days.

A hearing on the disciplinary charges was scheduled for November 19. On November 13, however, Hanks signed a document entitled “Waiver of Hearing -- Plea of Guilty,” which states, in part, “I admit to the violation as follows and waive my right to all procedural rights including appeal.” By waiving his right to a hearing, Hanks pleaded

guilty to the first and third charges and received 15 days of segregation and five days of extended incarceration.

In July 2008, Hanks petitioned the district court for a writ of habeas corpus. He alleged that he has a mental illness and that prison officials violated his constitutional right to due process by disciplining him despite his mental illness. In his petition, he sought to set aside his prison discipline and, in addition, sought a transfer to a mental-health unit. In December 2008, the district court denied the petition. Hanks appeals.

D E C I S I O N

A writ of habeas corpus is a statutory remedy that allows a prison inmate to seek “relief from imprisonment or restraint.” Minn. Stat. § 589.01 (2006). “A habeas corpus hearing is not needed when the [petitioner] does not allege sufficient facts to constitute a *prima facie* case for relief.” *Sanders v. State*, 400 N.W.2d 175, 176 (Minn. App. 1987), *review denied* (Minn. Apr. 17, 1987). Rather, an evidentiary hearing is required “only if a factual dispute is shown by the petition.” *Seifert v. Erickson*, 420 N.W.2d 917, 920 (Minn. App. 1988), *review denied* (Minn. May 18, 1988). In this procedural posture, the denial of a petition for a writ of habeas corpus is a question of law, to which we apply a *de novo* standard of review. *State ex rel. Guth v. Fabian*, 716 N.W.2d 23, 26 (Minn. App. 2006), *review denied* (Minn. Aug. 15, 2006).

I. Prison Discipline

Hanks first argues that the district court erred by denying his petition without an evidentiary hearing because his due process rights were violated when he was disciplined despite his mental illness.

Both the United States Constitution and the Minnesota Constitution provide that no person may be deprived of “life, liberty, or property without due process of law.” U.S. Const. amend. XIV, § 1; *see also* Minn. Const. art. I, § 7. A prisoner has a protected liberty interest in avoiding an extension of his supervised-release date. *Johnson v. Fabian*, 735 N.W.2d 295, 302 (Minn. 2007). A prisoner may have a protected liberty interest in avoiding disciplinary segregation if the discipline “imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.” *Sandin v. Conner*, 515 U.S. 472, 483-84, 115 S. Ct. 2293, 2300 (1995); *Carillo v. Fabian*, 701 N.W.2d 763, 771-72 n.4 (Minn. 2005). The parties have not presented arguments that address the *Sandin* test in detail. For purposes of resolving this case, we will assume without deciding that Hanks also has a protected liberty interest in avoiding disciplinary segregation.

In the context of a prison disciplinary hearing, an inmate is entitled to (1) written notice of the claimed violation at least 24 hours before the hearing; (2) an opportunity to present evidence and call witnesses if it will not jeopardize institutional safety or correctional goals; and (3) a written statement from an impartial decision maker explaining the evidence and reasoning relied upon for the disciplinary action. *Wolff v. McDonnell*, 418 U.S. 539, 563-67, 94 S. Ct. 2963, 2978-80 (1974); *Hrbek v. Nix*, 12 F.3d 777, 780 (8th Cir. 1993).

Each of these three requirements is satisfied in this case. First, Hanks received notice of the alleged violations. In fact, Hanks signed a statement that he “acknowledge[d] receipt of this notice of violation.” Second, Hanks had the opportunity

to present evidence and call witnesses at the hearing scheduled for six days later. *See Wolf*, 418 U.S. at 566, 94 S. Ct. at 2979. But Hanks declined the opportunity to present evidence at a hearing when he signed the document entitled, “Waiver of Hearing -- Plea of Guilty.” Third, Hanks received a written notice explaining why his incarceration was extended by five days. *Id.* at 564-65, 94 S. Ct. at 2979. The narrative section of the notice of violation describes Hanks’s conduct, explains the offenses charged, and states the maximum punishments associated with each offense.

Hanks contends that his waiver of the right to a hearing is ineffective because he did not receive notice that he could have relied on his mental illness as a defense at a discipline hearing. He asserts, “I did not knowingly waive my rights because I did not know I even had them.” But Hanks has not cited any caselaw stating that he had a right to present a mental-illness defense or a right to be informed of a mental-illness defense. We are not aware of any such caselaw. Hanks’s contention is, in essence, an argument that he was entitled to additional process. Procedural due process is limited in the prison context. *See, e.g., Washington v. Harper*, 494 U.S. 210, 227, 110 S. Ct. 1028, 1039-40 (1990) (holding that treatment of mentally ill prisoner with antipsychotic drugs against his will, without hearing, did not violate right to procedural due process). In short, there is no basis for extending existing caselaw to recognize the right that Hanks claims was violated.

Thus, the record before the district court establishes that Hanks’s right to due process of law was not violated. Because there is no dispute of any material fact on that

issue, the district court did not err by denying that part of the petition without conducting an evidentiary hearing.

II. Treatment of Mental Illness

Hanks also argues that the district court erred by rejecting his arguments that he should be housed in a different facility or a different part of the same prison and given appropriate treatment for his mental illness.

First, Hanks argues that he has a right to be confined in a hospital for the mentally ill pursuant to an administrative rule requiring correctional facilities to separately house certain categories of inmates, including “inmates classified as mentally ill in a manner consistent with Minnesota Statutes, section 253B.05.” Minn. R. 2911.2500, subp. 1 (2007). But Section 253B.05 pertains only to emergency admissions and treatment at hospitals for the mentally ill, and the statute permits a person to be held for up to 72 hours. Minn. Stat. § 253B.05, subds. 1, 3 (2008). Rule 2911.2500 does not apply after 72 hours and does not require that mentally ill persons be incarcerated separately from the general prison population. Hanks has not identified any provision of state law that limits the discretion of the commissioner of corrections to keep Hanks in the general prison population.

Second, Hanks argues that prison officials have violated the Eighth Amendment to the United States Constitution by denying him appropriate treatment for his mental illness and for an alleged brain injury. Pursuant to the Eighth Amendment’s proscription against cruel and unusual punishment, the government is obligated “to provide medical care for those whom it is punishing by incarceration.” *Estelle v. Gamble*, 429 U.S. 97, 103, 97

S. Ct. 285, 290 (1976). To show cruel and unusual punishment due to inadequate medical care, a prisoner must prove that the conduct of prison officials amounts to “deliberate indifference” or that the officials “actually knew of [and] deliberately disregarded” a prisoner’s serious medical needs. *Dulany v. Carnahan*, 132 F.3d 1234, 1239 (8th Cir. 1997). “[A]n inmate cannot create a question of fact by merely stating that [he] did not feel [he] received adequate treatment,” *id.* at 1240, and an inmate’s mere disagreement with the treatment he received also is insufficient to create a question of fact, *id.* at 1241.

The district court record indicates that Hanks has received extensive care for his mental health for years. For reasons of privacy, we will refrain from describing the treatment in depth. We have reviewed approximately 25 pages of records describing Hanks’s condition and the care that he has received since being incarcerated, and those records dispel any notion of either “deliberate indifference” or treatment “so inappropriate as to evidence intentional maltreatment or refusal to provide essential care.”

Id. To the contrary, the district court record indicates that Hanks has received fairly extensive mental-health treatment, including assessments, therapies, and a variety of medications, while in prison and was admitted to a special-needs unit on at least one occasion.

Third, Hanks argues that prison officials have denied him the treatment to which he is entitled by Minn. Stat. § 253.21 (2008). Hanks did not allege a violation of section 253.21 in his petition and did not present any argument to the district court concerning that statute. Accordingly, the issue is not properly preserved and, thus, is beyond the

scope of our review. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988); *see also Joelson v. O'Keefe*, 594 N.W.2d 905, 912 (Minn. App. 1999), *review denied* (Minn. July 28, 1999).

In sum, there is no dispute of any material fact, and the district court did not err by denying the petition without conducting an evidentiary hearing.

Affirmed.